



# California Fair Political Practices Commission

August 25, 1988

John Glenn  
President  
Bay Area Rapid Transit District Board  
800 Madison Street  
P.O. Box 12688  
Oakland, CA 94606-2688

Re: Your Request for Advice  
Our File No. A-88-240

Dear Mr. Glenn:

I am writing to confirm our telephone conversation of August 23, 1988, at which time you withdrew your request for formal written advice, and requested, instead, this confirming letter regarding your ability to appoint BART Board Members to a liaison committee involved with the development of an agreement between BART and Santa Clara County.

As you are aware, the Political Reform Act prohibits any public official from participating in a governmental decision in which he or she has a financial interest. Because of your business dealings with Santa Clara County, you are prohibited from participating in decisions which would foreseeably have a material financial effect on Santa Clara County.

The question presented is whether it is foreseeable that appointing members to the liaison committee will have a material financial effect on Santa Clara County. Absent any evidence that you have attempted in any way to influence the independent actions of the board members whom you would appoint to the liaison committee (see Benjamin Advice Letter, No. A-86-148, copy enclosed), and based on your description of the operation of the liaison committee, we do not feel the foreseeability test has been met.

If you have any additional questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

By: Lilly Spitz  
Counsel, Legal Division

LS:plh  
Enclosure



BAY AREA RAPID TRANSIT DISTRICT  
800 Madison Street - Lake Merritt Station  
P.O. Box 12688  
Oakland, CA 94604-2688  
Telephone (415) 464-6000

August 5, 1988

Ms. Lilly Spitz  
Fair Political Practices Commission  
428 "J" Street, Suite 800  
Sacramento, CA. 95814

JOHN GLENN  
PRESIDENT

WILFRED T. USSERY  
VICE PRESIDENT

KEITH BERNARD  
GENERAL MANAGER

Dear Ms. Spitz:

Thank you very sincerely for your courtesy in our meeting of August 3, 1988, and having seen me without my having an appointment.

DIRECTORS

BARCLAY SIMPSON  
1ST DISTRICT

NELLO BIANCO  
2ND DISTRICT

HOWARD P. ABELSON  
3RD DISTRICT

MARGARET K. PRYOR  
4TH DISTRICT

ROBERT S. ALLEN  
5TH DISTRICT

JOHN GLENN  
6TH DISTRICT

WILFRED T. USSERY  
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ARLO HALE SMITH  
8TH DISTRICT

JOHN H. KIRKWOOD  
9TH DISTRICT

I am writing to follow up on our conversation yesterday, regarding the appointment of a Liaison Group of BART Directors to deal with their Santa Clara counterparts on the development of an agreement between BART and Santa Clara County for the extension of BART service into that County.

The Liaison group is designated to work with their counterparts in Santa Clara County, but has no autonomous authority or decision making authority. The negotiating is basically done by the staffs of each agency. The Liaison group provides policy guidance to the staff, and brings back a recommended agreement to a standing committee of the BART Board; the Engineering and Operations Committee. That Committee in turn has no autonomous authority to commit BART or make decisions on behalf of the District. The Engineering committee may recommend an agreement to the full Board of Directors, which by majority vote alone, can make binding decisions or agreements between BART and other agencies.

With respect to the negotiating process, I would point out that, while the staff may expect policy guidance from the Liaison Group, the staff through the General Manager reports to the Board as a whole, and is charged with carrying out the Board's Policy direction by a majority vote of the Board. Individual Directors or a Committee of the Board, may request actions by staff related to District business within their purview, but does not have authority to give explicit direction to the staff.

I think the above answers the three questions which you posed to me. ~~Before responding to me, I would appreciate again discussing the above by telephone with you.~~ I will be out of town until August 15 and will telephone you upon my return. Your courtesy and assistance are sincerely appreciated.

Yours truly,

A handwritten signature in cursive script, appearing to read "John", written in dark ink.

John Glenn  
President



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June 23, 1988

JOHN GLENN  
PRESIDENT

WILFRED T. USSERY  
VICE-PRESIDENT

KEITH BERNARD  
GENERAL MANAGER

Ms. Diane M. Griffiths  
General Counsel  
California Fair Political Practices Commission  
428 J Street - Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

DIRECTORS

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1ST DISTRICT

NELLO BIANCO  
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JOHN H. KIRKWOOD  
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Thank you very much for your courtesy and assistance in our two telephone conversations. I sincerely appreciate your permitting me to take part in the symbolic signing agreement between BART and SamTrans.

To confirm what I told you, I did not take part in the negotiations. The vote by the eligible BART Board members was unanimous and the contract has been signed by the Vice President. Therefore, whatever I do now will not change that agreement.

Pursuant to your request, I am providing the details for my request to appoint a BART Board Committee to bring to the Board any agreement which could be made with the Santa Clara County Transportation Agency for them to join the BART system. As I advised you, a firm which I own bid on a contract to service the liability claims of the Agency and won the contract as the low bidder.

The BART President is authorized to appoint all Board Committees. The actual negotiations are conducted by the BART staff. The staff has worked out a formula in which any agency joining the system must pay the total local cost of what is built outside the District plus a pro rata share of what has already been constructed inside the District.

This may be somewhat confusing to you, and I would be pleased to come to Sacramento with our General Manager so that he can explain how the above formula is applied, showing that neither I nor any other BART Director would have any control over changing that formula. All Board Directors are supportive of that formula.

Ms. Diane M. Griffiths

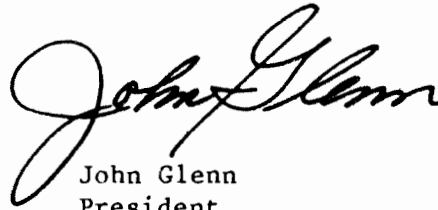
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June 23, 1988

There is no way that I can personally benefit by appointing the Board Committee for the negotiating group. As far as my contract with Santa Clara County Transportation Agency, it is simply awarded to the lowest bidder and were I not to be the lowest bidder the next time the contract is let, I would lose it whether or not I appointed the Committee.

I respectfully request that as the unanimously elected BART President I be permitted to appoint the Directors to that Committee. I will not take part in the negotiations nor any debate nor will I vote on the matter. I will be pleased to come to Sacramento with our General Manager to prove to you that I would have no influence upon the outcome of any agreement that the BART Board would accept.

Yours very truly,

A handwritten signature in cursive script, reading "John Glenn". The signature is written in dark ink and is positioned above the printed name and title.

John Glenn  
President



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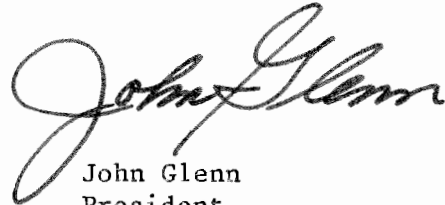
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John Glenn  
President



# California Fair Political Practices Commission

June 30, 1988

John Glenn  
Bay Area Rapid Transit District  
P.O. Box 12688  
Oakland, CA 94604-2688

Re: File No. 88-240

Dear Mr. Glenn:

Your letter received by the Fair Political Practices Commission on June 27, 1988, has been reassigned to Lilly Spitz an attorney in the Legal Division. If you have any questions regarding your letter, you may reach her at (916) 322-5901.

Sincerely,

*Diane M. Griffiths*  
Diane M. Griffiths  
General Counsel

DMG:plh